

**ARMY RELATIONSHIPS WITH  
PRIVATE ORGANIZATIONS  
(AKA: NON-FEDERAL ENTITIES)**

by

Mr. Michael J. Wentink  
Army Standards of Conduct Office  
Office of The Judge Advocate General

This article is a general discussion concerning our official and personal relationships with nonprofit professional, scientific and technical non-Federal entities (NFEs), especially those whose purpose is to support the Army, or some part of the Army, and its ideals, goals and needs. Examples of such NFEs are the Association of the United States Army (AUSA), Armed Forces Communications and Electronics Association (AFCEA), Society of American Military Engineers (SAME), Field Artillery Association (FAA), American Society of Military Comptrollers (ASMC), Judge Advocates Association (JAA), and the Army-Air Force Mutual Aid Association. (AAFMAA).

The ethical rules governing our relationships with NFEs are in the Office of Government Ethics (OGE) *Standards of Ethical Conduct for Employees of the Executive Branch* and the Department of Defense (DOD) *Joint Ethics Regulation* (JER), DOD 5500.7-R. They are detailed, specific and complex. The purpose of this article is to provide an overview of the rules. It is important to understand these rules since they are enforced by Federal criminal law and punitive regulations.

There has been concern expressed that, in replacing Army Regulation 600-50, the Army's previous Standards of Conduct regulation, the JER changed the playing field in our relationships with NFEs. Not really. What the JER did, however, was to create a heightened awareness of the rules by requiring Army commanders and supervisors to scrutinize conduct that had been unexamined for a some time because "that's just the way we have always done it." So, while the rules did not change much, many issues have been raised for the first time and, in some cases, we are finding examples of conduct that should ***not*** have been "just the way we have always done it."

The first step in dealing with and resolving any NFE question is to determine whether the relationship is either personal or official. The nature of the relationship will guide the analysis and generate the answer, and more often than not, the results will be different depending on whether we are dealing with a personal or official situation.

### **PERSONAL RELATIONSHIPS WITH NFEs**

Army employees are not barred from joining, participating in, or holding office in NFEs. On the contrary, they are encouraged to do so, especially when such activity will promote their professional or personal development, or make them an active part of the local military or civilian communities. However, there are rules that govern this personal participation.

**Conflicts of Interest.** By becoming an officer, director or employee of a NFE, the Army employee has a relationship with that organization that restricts what he or she can do as an Army official. Specifically, a criminal law, implemented in Subpart D of the *Standards of Ethical Conduct*, prohibits employees from participating in official matters, even though someone else might make the final decision, affecting the financial interests of that organization. It does not matter that the Army employee is not paid by the organization, because the law imputes the financial interests of the organization to the officer, director or employee of the organization.

Even if the Army official is not an officer, director or employee of a NFE, but rather is an "active participant," he or she has a "covered relationship" with the NFE. The *Standards of Ethical Conduct* require the official to consider the appearances created by this relationship and normally the Army employee should not participate in those matters where the NFE is a party or represents a party to the official matter. Examples of "active participants" include members of the NFE's rule committee or the NFE's points of contact for a membership drive. "Active participants" would not include members of an NFE who merely pay their dues, read the monthly newsletter and attend an occasional function.

This means that an Army official who is an officer, director or employee of an NFE may not participate as an Army official in such matters as whether to send an employee to a training program sponsored by the NFE, or to provide a speaker or other support to a symposium hosted by the NFE. If the Army official is not an officer, director or employee of an NFE, but is an "active participant" in the organization, the prohibition is not quite so absolute; but,

nevertheless, to avoid the appearance of impropriety, the Army employee should refrain from participation in such official Army matters.

**Acting as Agent of NFE.** Another criminal statute prohibits any officer or employee from acting as an agent for anyone before the Army or any other part of the Federal Government in any particular matter in which the United States is a party or has an interest. This law applies to any Federal officer or employee acting on behalf of any non-Federal organization, even nonprofit, benevolent and military-related organizations.

The Army Standards of Conduct Office (SOCO) recognized the problems created by this law, especially in a Commander's relationships with NFEs created on his or her installation for the professional development, recreation and play of those working and living there. SOCO raised these concerns with the Department of Defense and proposed a legislative change. The law was changed on 6 August 1996, to permit representation of a NFE by an officer or employee of non-profit cooperative, voluntary, professional, recreational, or similar organizations. However, the representation must be uncompensated and a majority of the membership of the NFE must consist of Federal employees and their family members. Finally, this exception does not extend to trying to obtain a grant or contract from the Federal Government for the NFE.

If the situation does not meet the criteria of the recent amendment, NFE dealings with the Army must be accomplished by someone who is not a military officer or government civilian employee. The only other contacts with the Federal Government that an officer or employee

may have on behalf of an NFE are those that are purely "ministerial" in nature, such as: (1) conveying purely factual information; (2) merely delivering or receiving materials or documents; (3) answering (without advocating for a particular position) direct requests for information; or (4) signing a document that attests to the existence or non-existence of a given fact (such as a NFE's secretary's attestation that a given signature is valid).

**Other Ethical Issues.** Military personnel and civilian employees may not:

- Accept positions as officers, directors or similar positions in a NFE offered because of their official duty position (*e.g.*, a chief of staff may not accept a position in a local NFE that traditionally offers this position to the incumbent of this duty position);
- Use their office, title or position in connection with their personal participation with NFEs (*e.g.*, may not show title or duty position on NFE's letterhead listing its officers; may not task their subordinates to assist them in their personal participation such as drafting correspondence and running errands);
- Personally solicit subordinates or prohibited sources (generally, DOD contractors), or permit the use of their names in a solicitation that targets subordinates or prohibited sources in NFE membership drives or fundraising campaigns.

Finally, as a matter of personnel policy, the Deputy Secretary of Defense directed on 23 July 1996 that General Officers may not accept compensation for being an officer or a member of the board of an NFE. A couple of very limited exceptions are permitted but only with the approval of the Secretary of the Army.

**Can Do's.** After all the negatives, we often are asked: "Well, what can we do?" In addition to the basic rule that Army personnel are free to join NFEs and, if it will not interfere with their official duties because of a conflict of interest, actively participate or even accept an office, here are some other permissible activities:

- Military members may use their rank and component designation in connection with their private association activities (*e.g.*, General, U.S. Army);
- Under some circumstances, employees may be given time off and may use government resources in their personal participation with NFEs when they meet the criteria and have the approvals set out in JER 3-300b (writing papers for professional associations and learned societies), or JER 3-300c (certain community support activities);
- If approved by the "agency designee" (a supervisor or, for a General Officer in command, his or her Ethics Counselor (EC)), occasional use of the telephone (no toll calls), computer, library and similar resources during off-duty time (JER 3-305 and 2-301);

- If the "agency designee" determines that it is in the Army's interest, Army personnel may accept free attendance at a "widely attended gathering" (meaning a large and diverse group) sponsored by an NFE, on their own time or during an excused absence (if the value of the free attendance exceeds \$250, the Army employee must report this gift on his or her Financial Disclosure Report). For example, after consulting with his or her EC, a supervisor might conclude that it is in the Army's interest for a subordinate to attend a free technical symposium, including a cocktail party and dinner, attended by industry and government representatives and sponsored by a professional or technical association.

It is important to note that these "permissions" to use government time and resources or to accept gifts of free attendance are not rights or entitlements. They are exceptions to the general rule and should be granted judiciously and only when they are indeed in the Army's direct interest (not simply because a supportive NFE needs assistance) and where the investment of time and resources is proportionate to the benefit enjoyed by the Army.

### **OFFICIAL RELATIONSHIPS WITH NFEs**

Now, let's turn to official Army relationships with private organizations. There is much that is permissible. If the applicable criteria are met, there are many situations in which we can

officially attend, accept free attendance at, participate in, support and cosponsor events with NFEs.

**Liaisons.** It is permissible to appoint Army officials to act as official liaisons with NFEs where there is a significant and continuing Army interest to be served. But, they are liaisons; when they participate they do so as Army employees and their loyalty is to the Army. Liaisons are not directors or board members of the NFE. If they are officers, directors, or even active participants in the NFE in their personal capacities, then they may not be Army liaisons because of the obvious conflict of interest in loyalties. Further, while as liaisons they do not participate in the management of the organization *per se*, they may participate in matters of mutual interest to the NFEs and the Army and vote on those issues..

For example, it is permissible for a commander to appoint an officer as a liaison to the local AUSA Chapter. Among this officer's legitimate duties would be to inform the Chapter of the command's concerns with respect to its prospective activities, and to inform the commander of options, plans and needs being explored by the AUSA Chapter. However, it would not be appropriate for the liaison to use government resources to assist the local Chapter maintain its mailing list, visit local merchants to encourage them to join, or to help with the annual membership drive at the installation. These activities should be done by “active participants” in their unofficial, personal capacities as members of the local chapter.



It is permissible to send an Army official TDY to perform liaison duties. It is also appropriate to send personnel on Army time and orders to participate in or attend a NFE event, if there is a legitimate governmental interest and purpose in the Army's participation.

Some Defense contractors invite senior DOD officials to sit on their “advisory boards.” In August 1996, the DOD Designated Agency Ethics Official (DAEO), the DOD General Counsel, advised that this type of DOD liaison activity is not permitted because of a long standing DOD policy that DOD employees may not serve in any way as advisors to defense contractors or entities that seek to do business with DOD. The DOD DAEO has determined that the potential detriments to DOD outweigh any potential benefits of a liaison when the NFE is a defense contractor.

**Participation in Events.** Army organizations may provide speakers or logistical support (*e.g.* space, security, public address systems, *etc.*) for a NFE event if the criteria in the JER are met. For example, it is generally inappropriate to support a NFE event if the charge for admission exceeds the event’s reasonable costs. The Army may even cosponsor an event, such as a technical symposium, with a NFE if certain criteria and conditions are met, to include a written agreement. Often, however, cosponsorship is inappropriate; rather, it is the Army that is really sponsoring the event with the assistance of an NFE. In this case, the assistance should be provided pursuant to contract, and it must be clear that the Army, not the NFE, is sponsoring the event.

The manner and degree of Army participation in any event determines what kind of event it is, *i.e.*, Army sponsored, cosponsored, or Army supported. Additionally, if the Army cosponsors an event with an NFE or supports an NFE's event, it must be clear that the Army is not endorsing the organization.

The JER authority to participate in, support, or cosponsor events by and with NFEs is not a license for the Army to expend time and resources in support of an NFE above and beyond that permitted, or to help the NFE conduct its business. We must ensure that the expenditure of time and resources is of direct benefit and interest to the Army, and commensurate with that benefit and interest. The conclusion that an NFE is "friendly" to the Army and supports its goals and objectives is not sufficient justification to direct employees, using official Army time, to do such things as: assist the NFE with a membership or fundraising campaign; assist the NFE with a NFE seminar beyond providing speakers and other limited support; help the NFE fix its computer system; assist the NFE with auditing its books.

**Endorsement.** The *Standards of Ethical Conduct* prohibits government employees from using their title, office or position to officially endorse a NFE or its activities beyond that permitted in JER para. 3-210 (*e.g.*, fundraising for the Combined Federal Campaign and Army Emergency Relief). However, there is some permissible activity to encourage professional, community and other involvement that does not violate the rules because it does not amount to official bias, endorsement, favoritism or unlawful support.

Specifically, commanders and supervisors may encourage Army personnel to take an active part in their military and civilian communities, to include joining, supporting and participating in service and benevolent organizations. They may publicize and describe organizations that seem to share and support national defense, Army and community goals and ideals, and/or that help promote excellence in military or other skills. Finally, they may publicize events sponsored by such organizations.

As done for personal relationships with NFEs, the following are some specific "do's and don'ts" for official relationships.

#### **Some Specific Don'ts.**

- Don't appoint a point of contact in a unit for a NFE's membership drive or offer a pass or other benefit to the unit with the highest membership or participation rate in the NFE.
- Don't address subordinates in formation or on Army letterhead to extol the virtues of a particular NFE.
- Don't require subordinates to attend a NFE meeting so that they can learn about and join a NFE.

- Don't engage in coercive tactics such as requiring a soldier to explain a decision not to participate in or join a NFE.

### **Some Specific Do's.**

- As a general matter, it is permissible to use government resources to provide information on a general basis concerning a NFE's activities that Army personnel might be interested in either in an official capacity (*e.g.*, training courses, symposia, seminars) or unofficial and personal capacity (*e.g.*, picnics, car washes, luncheons, entertainment, membership drives, widely attended gatherings). For the "unofficial" activities, however, use of resources is more limited; for example, government postage cannot be used; but, it would be permissible to let a NFE representative post membership information explaining the benefits of membership on a non-official bulletin board or leave brochures in common areas. **CAVEAT:** What you permit one NFE to do, you must be prepared to allow other NFEs to do. We cannot play favorites.

- Commanders may encourage soldiers to become active in and join professional, technical, community, or other types of organizations. Within this context, it would be permissible and not a prohibited endorsement of any one organization to identify and describe various organizations that support professional development or the military community, or that are part of the civilian community, and worthy of consideration. It would even be permissible to

briefly inform Army personnel concerning the goals, objectives and activities of some of the organizations. It would also be acceptable to inform, in a neutral manner, of an ongoing membership drive.

- Commanders and supervisors may require subordinates to attend a professional development training session sponsored by an NFE. For example, commanders may require soldiers to attend a seminar concerning financial responsibility hosted by AAFMAA; but, the NFE may not try to gain members or to market any of its products during the seminar.

- After an officers' call at the officers' club, the commander may announce that a NFE is sponsoring a "happy hour" which anyone is free to attend or not. At this event, NFE representatives may solicit memberships (but, this may not be done from senior to subordinate).

## **CONCLUSION**

The laws and regulations regarding official and personal relationships with private organizations are complex. This article is not all inclusive. The permutations on the relationships between NFEs and the Army and Army personnel seem infinite. Officials acting in their official or personal capacities in matters involving private organizations should actively seek legal advice from their Ethics Counselors to ensure they are acting properly. Finally, if they are

acting as "agency designees" to approve a course of conduct, the JER requires that they consult with their EC.